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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,694	06/13/2002	Yoichi Kawashima	0388-020199	4677

7590

04/08/2004

Russell D Orkin
700 Koppers Building
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Pittsburgh, PA 15219-1818

EXAMINER

WEAVER, SUE A

ART UNIT	PAPER NUMBER
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3727

10

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,694

Applicant(s)

KAWASHIMA ET AL.

Examiner

Sue A. Weaver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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1. The drawings were received on 1/22/04. These drawings are acceptable.
2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants are advised that there is insufficient structure set forth in the claims for the container to be capable of "instilling its contents by a pressing force of about 1.28 to about 3.34N", as is now claimed in amended claim 1. In the first place the material of the container isn't even claimed in claim 1. Furthermore applicants appear to be relying on the test results listed in the specification which were performed on containers with a particular material and a particular size as well as a particular size dent portion.

Applicants have not set forth any such combination in the claims, to affect such force range. It is also well-known that the pressure is resultant from the viscosity of the liquid being force out of the container. The reported tests indicated that water was used to achieve the particular force range and applicants have not set forth any particular viscosity for the resultant force anywhere in the claims. The bore of the applicator tip also has a bearing on the pressure and applicants have not claimed any particular diameter opening to achieve such results. A larger diameter opening would require less force than a smaller one.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1 and 2, insofar as they are definite, remain rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese '971 in view of Japanese '927 for the reasons set forth in paragraph 5 of the previous Office action, Paper No.7.

4. Claim 1 insofar as it is definite, remains rejected under 35 U.S.C. 103(a) as being unpatentable over the conventional bottle shown in Figure 13, in view of Lier et al for the reasons set forth in paragraph 6 of the previous Office action.

5. Claims 2 and 3, insofar as they are definite, remain rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Keiter for the reasons set forth in paragraph 7 of the previous Office action.

6. Claims 4, 5 and 6, insofar as they are definite remain rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1, 2 and 3, respectively above, and further in view of Lifshy, in the manner set forth in paragraph 8 of the previous Office action.

7. Claim 7, insofar as it is definite, is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Poynter.

To have formed the bottle of blow molded polyethylene would have been obvious in view of Poynter teach blow molding a drop dispenser bottle from polyethylene. It is well known in the molding art that the amount of plastic required to form a container will be dependent on a number of factors such as desired container size and wall thickness.

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It is noted that applicants have not set forth any particular size. Therefore the selection of the amount of polyethylene is considered to be an obvious matter of choice.

8. Claims 8 and 9, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over the bottle shown in Figure 13, in view of Lier et al in the manner applied to claim 1 in paragraph 4 above.

The prior art container appears to be of the size claimed in claim 8 as reported in the test results. In any event the dimensions are considered to be a matter of choice dependent on the volume of contents to be packaged. In like manner the size of the recess is considered to be a matter of choice dependent in part on the container size and volume to be instilled. Therefore the particular selection would have been an obvious matter of choice.

9. Applicant's arguments with respect to claim 1 and thus 2-9 have been considered but are moot in view of the new ground(s) of rejection. With regard to the suggestion to provide dents in container walls, the art has already established the use of such dents for squeeze containers. Therefore claims 1-9 have been rejected.

10. Applicant's arguments, see page 10 of the amendment, filed 1/22/04, with respect to the objections to the drawings have been fully considered and are persuasive. The objections of drawings have been withdrawn.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information

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and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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on _____
(Date)

Typed or printed name of person signing this certificate:

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(Date)

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (703) 308-1186. The examiner can normally be reached on Tuesday-Friday.

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— The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sue A. Weaver
Primary Examiner

SW